

SUPREME COURT OF ARIZONA

In the Matter of) Arizona Supreme Court
) No. R-11-0031
PETITION TO AMEND RULE 4.1(i),)
ARIZONA RULES OF CIVIL PROCEDURE)
) **FILED 08/30/2012**
)
)
_____)

**ORDER
REOPENING PETITION FOR COMMENT**

A petition having been filed proposing to amend Rule 4.1(i), Arizona Rules of Civil Procedure, and comments having been received, upon consideration,

IT IS ORDERED that the attached draft amendment, which is based on the proposal made by the State Bar of Arizona in its comment, shall be opened for comment until November 9, 2012.

DATED this _____ day of August, 2012.

REBECCA WHITE BERCH
Chief Justice

TO:
Rule 28 Distribution
Geoffrey M Trachtenberg
David L Abney
Richard S Plattner
Kent J Hammond
Eric C Awerkamp
Page Chancellor Marks
C Lincoln Combs
Sara Siesco

John P Torgenson
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Randall A Hinsch
Bonnie Shore Dombrowski
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Jeffrey D Dollins
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ATTACHMENT¹

Arizona Rules of Civil Procedure

Rule 4.1. Service of Process Within Arizona

(a) Territorial Limits of Effective Service. All process may be served anywhere within the territorial limits of the state.

(b) Summons; Service With Complaint. The summons and pleading being served shall be served together. The party procuring service is responsible for service of a summons and the pleading being served within the time allowed under Rule 4(i) of these Rules and shall furnish the person effecting service with the necessary copies of the pleading to be served.

(c) Waiver of Service; Duty to Save Costs of Service; Request to Waive.

(1) A defendant who waives service of a summons does not thereby waive any objection to the venue or to the jurisdiction of the court over the person of such defendant.

(2) An individual, governmental entity, corporation, partnership or unincorporated association that is subject to service under paragraph (d), (h)~~(i)~~(1)-(4)(A), or ~~(k)~~i of this Rule 4.1 and that receives notice of an action in the manner provided in this paragraph has a duty to avoid unnecessary costs of serving the summons. To avoid costs, the plaintiff may notify such a defendant of the commencement of the action and request that the defendant waive service of a summons. The notice and request:

- (A) shall be in writing and shall be addressed directly to the defendant in accordance with paragraph (d), (h) ~~(i)~~(1)-(4)(A), or ~~(k)~~i of this Rule 4.1, as applicable;
- (B) shall be dispatched through first-class mail or other reliable means;
- (C) shall be accompanied by a copy of the complaint and shall identify the court in which it has been filed;

¹ Changes or additions in rule text are indicated by underscoring and deletions from text are indicated by ~~strikeouts~~.

- (D) shall inform the defendant, by means of a text prescribed in an official form promulgated pursuant to Rule 84, of the consequences of compliance and of a failure to comply with the request;
- (E) shall set forth the date on which the request is sent;
- (F) shall allow the defendant a reasonable time to return the waiver, which shall be at least 30 days from the date on which the request is sent; and
- (G) shall provide the defendant with an extra copy of the notice and request, as well as a prepaid means of compliance in writing.

If a defendant fails to comply with a request for waiver made by a plaintiff located within the United States, the court shall impose the costs subsequently incurred in effecting service on the defendant unless good cause for the failure be shown.

- (3) A defendant that, before being served with process, timely returns a waiver so requested is not required to serve an answer to the complaint until 60 days after the date on which the request for waiver of service was sent.
- (4) When the plaintiff files a waiver of service with the court, the action shall proceed, except as provided in paragraph (3), as if a summons and the complaint had been served at the time of filing the waiver, and no proof of service shall be required.
- (5) The costs to be imposed on a defendant under paragraph (2) for failure to comply with a request to waive service of a summons shall include the costs subsequently incurred in effecting service under paragraph (d), (h), ~~(i)~~ or ~~(k)~~ of this Rule 4.1, together with the costs, including a reasonable attorney's fee, of any motion required to collect the costs of service.

(d) Service of Summons Upon Individuals. Service upon an individual from whom a waiver has not been obtained and filed, other than those specified in paragraphs (e), (f) and (g) of this Rule 4.1, shall be effected by delivering a copy of the summons and of the pleading to that individual personally or by leaving copies thereof at that individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by delivering a copy of the summons and of the pleading to an agent authorized by appointment or by law to receive service of process.

(e) Service of Summons Upon Minors. Service upon a minor under the age of sixteen years shall be effected by service in the manner set forth in paragraph (d) of this Rule 4.1 upon the minor and upon the minor's father, mother or guardian, within this state, or if none is found therein, then upon any person having the care and control of such minor, or with whom the minor resides.

(f) Service of Summons Upon A Minor With Guardian or Conservator. Service upon a minor for whom a guardian or conservator has been appointed in this state shall be effected by service in the manner set forth in paragraph (d) of this Rule 4.1 upon such guardian or conservator and minor.

(g) Service of Summons Upon Incompetent Persons. Service upon a person who has been judicially declared to be insane, gravely disabled, incapacitated or mentally incompetent to manage that person's property and for whom a guardian or conservator has been appointed in this state shall be effected by service in the manner set forth in paragraph (d) of this Rule 4.1 upon such person and also upon that person's guardian or conservator, or if no guardian or conservator has been appointed, upon such person as the court designates.

(h) Service of Summons Upon the State. ~~If a waiver has not been obtained and filed, service upon the state shall be effected by delivering a copy of the summons and of the pleading to the attorney general.~~

~~(i) Service of Summons Upon a County, Municipal Corporation or Other Governmental Subdivision, a Governmental Entity.~~ Service upon a county or a municipal corporation or other governmental subdivision of the state entity subject to suit, and from which a waiver has not been obtained and filed, shall be effected by delivering a copy of the summons and of the pleading to the ~~chief executive officer, the secretary, clerk, or recording officer thereof.~~ following individuals:

- (1) For service upon the State, the Attorney General;
- (2) For service upon a County, the Clerk of the Board of Supervisors thereof;
- (3) For service upon a Municipal Corporation, the Clerk thereof; and
- (4) For service upon any other governmental entity:

(A) The individual designated by the entity pursuant to statute to receive service of process; or

(B) If the entity has not pursuant to statute designated a person to receive service of process, then the chief executive officer(s), or, alternatively, the official secretary, clerk, or recording officer of the entity as established by law.

~~(j) Service of Summons Upon Other Governmental Entities.~~ Service upon any governmental entity not listed above shall be effected by serving the person, officer, group or body responsible for the administration of that entity or by serving the appropriate legal officer, if any, representing the entity. Service upon any person who is a member of the “group” or “body” responsible for the administration of the entity shall be sufficient.

(k) Service of Summons Upon Corporations, Partnerships or Other Unincorporated Associations. Service upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit in a common name, and from which a waiver has not been obtained and filed, shall be effected by delivering a copy of the summons and of the pleading to a partner, an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the party on whose behalf the agent accepted or received service.

(l) Service of Summons Upon a Domestic Corporation If Authorized Officer or Agent Not Found Within the State. When a domestic corporation does not have an officer or agent in this state upon whom legal service of process can be made, service upon such domestic corporation shall be effected by depositing two copies of the summons and of the pleading being served in the office of the Corporation Commission, which shall be deemed personal service on such corporation. The return of the sheriff of the county in which the action or proceeding is brought that after diligent search or inquiry the sheriff has been unable to find any officer or agent of such corporation upon whom process may be served, shall be prima facie evidence that the corporation does not have such an officer or agent in this state. The Corporation Commission shall file one of the copies in its office and immediately mail the other copy, postage prepaid, to the office of the corporation, or to the president, secretary or any director or officer of such corporation as appears or is ascertained by the Corporation Commission from the articles of incorporation or other papers on file in its office, or otherwise.

(m) Alternative or Substituted Service. If service by one of the means set forth in the preceding paragraphs of this Rule 4.1 proves impracticable, then service may be accomplished in such manner, other than by publication, as the court, upon motion and without notice, may direct. Whenever the court allows an alternate or substitute form of service pursuant to this subpart, reasonable efforts shall be undertaken by the party making service to assure that actual notice of the commencement of the action is provided to the person to be served and, in any event, the summons and the pleading to be served, as

well as any order of the court authorizing an alternative method of service, shall be mailed to the last known business or residence address of the person to be served. Service by publication may be employed only under the circumstances, and in accordance with the procedures, specified in Rules 4.1(~~n~~l), 4.1(~~o~~m), 4.2(f) and 4.2(g) of these Rules.

(~~n~~l) Service by Publication; Return. Where the person to be served is one whose residence is unknown to the party seeking service but whose last known residence address was within the state, or has avoided service of process, and service by publication is the best means practicable under the circumstances for providing notice of the institution of the action, then service may be made by publication in accordance with the requirements of this subpart. Such service shall be made by publication of the summons, and of a statement as to the manner in which a copy of the pleading being served may be obtained, at least once a week for four successive weeks (1) in a newspaper published in the county where the action is pending, and (2) in a newspaper published in the county of the last known residence of the person to be served if different from the county where the action is pending. If no newspaper is published in any such county, then the required publications shall be made in a newspaper published in an adjoining county. The service shall be complete thirty days after the first publication. When the residence of the person to be served is known, the party or officer making service shall also, on or before the date of the first publication, mail the summons and a copy of the pleading being served, postage prepaid, to that person at that person's place of residence. Service by publication and the return thereof may be made by the party procuring service or that party's attorney in the same manner as though made by an officer. The party or officer making service shall file an affidavit showing the manner and dates of the publication and mailing, and the circumstances warranting the utilization of the procedure authorized by this subpart, which shall be prima facie evidence of compliance herewith. A printed copy of the publication shall accompany the affidavit. If the residence of the party being served is unknown, and for that reason no mailing was made, the affidavit shall so state.

(~~o~~m) Service by Publication; Unknown Heirs in Real Property Actions. When in an action for the foreclosure of a mortgage on real property or in any action involving title to real property, it is necessary for a complete determination of the action that the unknown heirs of a deceased person be made parties, they may be sued as the unknown heirs of the decedent, and service of a summons may be made on them by publication in the county where the action is pending, as provided in subpart (~~n~~l) of this Rule 4.1.

State Bar Committee Note

[No change in text.]